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7
8 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 868-A

11 **COOKE, CONWAY CECIL**
12 **34658 Linda Rosea Road**
13 **Temecula, CA 92592**
14 **Civil Engineer License No. C13860**
Structural Engineer License No. S1597

A C C U S A T I O N

15
16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. David Brown (Complainant) brings this Accusation solely in his official capacity as
20 the Executive Officer of the Board for Professional Engineers and Land Surveyors, Department
21 of Consumer Affairs.

22 2. On or about February 15, 1963, the Board for Professional Engineers and Land
23 Surveyors issued Civil Engineer License Number C13860 to Conway Cecil Cooke (Respondent).
24 The Civil Engineer License was in full force and effect at all times relevant to the charges brought
25 herein and will expire on March 31, 2011, unless renewed.

26 3. On or about December 29, 1969, the Board for Professional Engineers and Land
27 Surveyors issued Structural Engineer License Number S1597 to Conway Cecil Cooke
28

1 (Respondent). The Structural Engineer License was in full force and effect at all times relevant
2 to the charges brought herein and will expire on March 31, 2011, unless renewed

3 JURISDICTION

4 4. This Accusation is brought before the Board for Professional Engineers and Land
5 Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws.
6 All section references are to the Business and Professions Code unless otherwise indicated.

7 5. Section 6731 provides:

8 "Civil engineering embraces the following studies or activities in connection with fixed
9 works for irrigation, drainage, waterpower, water supply, flood control, inland waterways,
10 harbors, municipal improvements, railroads, highways, tunnels, airports and airways, purification
11 of water, sewerage, refuse disposal, foundations, grading, framed and homogeneous structures,
12 buildings, or bridges:

13

14 Civil engineers registered prior to January 1, 1982, shall be authorized to practice all land
15 surveying as defined in Chapter 15 (commencing with Section 8700) of Division 3."

16 6. Section 8759 provides in pertinent part:

17 (a) A licensed land surveyor or registered civil engineer authorized to practice land
18 surveying shall use a written contract when contracting to provide professional services to a client
19 pursuant to this chapter. The written contract shall be executed by the licensed land surveyor or
20 registered civil engineer and the client, or his or her representative, prior to the licensed land
21 surveyor or registered civil engineer commencing work, unless the client knowingly states in
22 writing that work may be commenced before the contract is executed. The written contract shall
23 include, but not be limited to, all of the following:

24 (1) A description of the services to be provided to the client by the licensed land surveyor
25 or registered civil engineer.

26 (2) A description of any basis of compensation applicable to the contract, and the method of
27 payment agreed upon by the parties.
28

1 (3) The name, address, and license or certificate number of the licensed land surveyor or
2 registered civil engineer, and the name and address of the client.

3 (4) A description of the procedure that the licensed land surveyor or registered civil
4 engineer and the client will use to accommodate additional services.

5 (5) A description of the procedure to be used by any party to terminate the contract. . . .”

6 7. Section 8762 provides:

7 (a) Except as provided in subdivision (b), after making a field survey in conformity with the
8 practice of land surveying, the licensed surveyor or licensed civil engineer may file with the
9 county surveyor in the county in which the field survey was made, a record of the survey.

10 (b) Notwithstanding subdivision (a), after making a field survey in conformity with the
11 practice of land surveying, the licensed land surveyor or licensed civil engineer shall file with the
12 county surveyor in the county in which the field survey was made a record of the survey relating
13 to land boundaries or property lines, if the field survey discloses any of the following:

14 (1) Material evidence or physical change, which in whole or in part does not appear on any
15 subdivision map, official map, or record of survey previously recorded or properly filed in the
16 office of the county recorder or county surveying department, or map or survey record maintained
17 by the Bureau of Land Management of the United States.

18 (2) A material discrepancy with the information contained in any subdivision map, official
19 map, or record of survey previously recorded or filed in the office of the county recorder or the
20 county surveying department, or any map or survey record maintained by the Bureau of Land
21 Management of the United States. For purposes of this subdivision, a "material discrepancy" is
22 limited to a material discrepancy in the position of points or lines, or in dimensions.

23 (3) Evidence that, by reasonable analysis, might result in materially alternate positions of
24 lines or points, shown on any subdivision map, official map, or record of survey previously
25 recorded or filed in the office of the county recorder or the county surveying department, or any
26 map or survey record maintained by the Bureau of Land Management of the United States.

1 (4) The establishment of one or more points or lines not shown on any subdivision map,
2 official map, or record of survey, the positions of which are not ascertainable from an inspection
3 of the subdivision map, official map, or record of survey.

4 (5) The points or lines set during the performance of a field survey of any parcel described
5 in any deed or other instrument of title recorded in the county recorder's office are not shown on
6 any subdivision map, official map, or record of survey.

7 (c) The record of survey required to be filed pursuant to this section shall be filed within 90
8 days after the setting of boundary monuments during the performance of a field survey or within
9 90 days after completion of a field survey, whichever occurs first.

10 (d)(1) If the 90-day time limit contained in subdivision (c) cannot be complied with for
11 reasons beyond the control of the licensed land surveyor or licensed civil engineer, the 90-day
12 time period shall be extended until the time at which the reasons for delay are eliminated. If the
13 licensed land surveyor or licensed civil engineer cannot comply with the 90-day time limit, he or
14 she shall, prior to the expiration of the 90-day time limit, provide the county surveyor with a letter
15 stating that he or she is unable to comply. The letter shall provide an estimate of the date for
16 completion of the record of survey, the reasons for the delay, and a general statement as to the
17 location of the survey, including the assessor's parcel number or numbers.

18 (2) The licensed land surveyor or licensed civil engineer shall not initially be required to
19 provide specific details of the survey. However, if other surveys at the same location are
20 performed by others which may affect or be affected by the survey, the licensed land surveyor or
21 licensed civil engineer shall then provide information requested by the county surveyor without
22 unreasonable delay.

23 (e) Any record of survey filed with the county surveyor shall, after being examined by him
24 or her, be filed with the county recorder.

25 (f) If the preparer of the record of survey provides a postage-paid, self-addressed envelope
26 or postcard with the filing of the record of survey, the county recorder shall return the postage-
27 paid, self-addressed envelope or postcard to the preparer of the record of survey with the filing
28 data within 10 days of final filing. For the purposes of this subdivision, "filing data" includes the

1 date, the book or volume, and the page at which the record of survey is filed with the county
2 recorder.

3 8. Section 8767 provides:

4 "If the county surveyor finds that the record of survey complies with the examination in
5 Section 8766, the county surveyor shall endorse a statement on it of his or her examination, and
6 shall present it to the county recorder for filing. Otherwise the county surveyor shall return it to
7 the person who presented it, together with a written statement of the changes necessary to make it
8 conform to the requirements of Section 8766. The licensed land surveyor or registered civil
9 engineer submitting the record of survey may then make the agreed changes and note those
10 matters which cannot be agreed upon in accordance with the provisions of Section 8768 and shall
11 resubmit the record of survey within 60 days, or within the time as may be mutually agreed upon
12 by the licensed surveyor or registered engineer and the county surveyor, to the county surveyor
13 for filing pursuant to Section 8768."

14 9. Section 8780 provides in pertinent part:

15 The board may receive and investigate complaints against licensed land surveyors and
16 registered civil engineers, and make findings thereon.

17 By a majority vote, the board may reprove, suspend for a period not to exceed two years, or
18 revoke the license or certificate of any licensed land surveyor or registered civil engineer,
19 respectively, licensed under this chapter or registered under the provisions of Chapter 7
20 (commencing with Section 6700), whom it finds to be guilty of:

21 (b) Any negligence or incompetence in his or her practice of land surveying.

22 ...

23 (d) Any violation of any provision of this chapter or of any other law relating to or
24 involving the practice of land surveying.

25 ...

26 (g) A breach or violation of a contract to provide land surveying services.

27 (h) A violation in the course of the practice of land surveying of a rule or regulation of
28 unprofessional conduct adopted by the board.

1 10. Title 16, California Code of Regulations section 415 states:

2 "A professional engineer or land surveyor licensed under the Code shall practice and
3 perform engineering or land surveying work only in the field or fields in which he/she is by
4 education and/or experience fully competent and proficient.

5 Nothing in this regulation shall be construed: (1) to prohibit a professional engineer from
6 signing plans which include engineering work in areas other than that in which he/she is fully
7 competent and proficient, if such work was performed by other engineers who were fully
8 competent and proficient in such work; (2) to prohibit a professional engineer from performing
9 engineering work or a land surveyor from performing land surveying work in areas which involve
10 the application of new principles, techniques, ideas or technology; (3) to prohibit a professional
11 engineer from supervising other engineers or a land surveyor from supervising other land
12 surveyors who may respectively be performing engineering work or land surveying work in areas
13 other than those in which the supervising professional engineer or supervising land surveyor is
14 fully competent and proficient; and (4) to prohibit a professional engineer from signing plans
15 which include engineering work, portions of which were designed or required by any
16 governmental agency."

17 11. California Code of Regulations, Title 16, section 404, subd. (n), states:

18 "For the sole purpose of investigating complaints and making findings thereon under
19 Sections 6775 and 8780 of the Code, "incompetence" as used in Sections 6775 and 8780 of the
20 Code is defined as the lack of knowledge or ability in discharging professional obligations as a
21 professional engineer or land surveyor."

22 12. California Code of Regulations, Title 16, section 404, subd.(w), states:

23 "For the sole purpose of investigating complaints and making findings thereon under
24 Sections 6775 and 8780 of the Code, "negligence" as used in Sections 6775 and 8780 of the Code
25 is defined as the failure of a licensee, in the practice of professional engineering or land
26 surveying, to use the care ordinarily exercised in like cases by duly licensed professional
27 engineers and land surveyors in good standing."

28 13. Section 118 of the Code states in pertinent part:

1 “(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
2 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
3 order of a court of law, or its surrender without the written consent of the board, shall not, during
4 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
5 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
6 provided by law or to enter an order suspending or revoking the license or otherwise taking
7 disciplinary action against the licensee on any such ground.

8 “(c) As used in this section, ‘board’ includes an individual who is authorized by any
9 provision of this code to issue, suspend, or revoke a license, and ‘license’ includes ‘certificate,’
10 ‘registration,’ and ‘permit.’”

11 COST RECOVERY

12 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
13 administrative law judge to direct a licensee found to have committed a violation or violations of
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
15 enforcement of the case.

16 FIRST CAUSE FOR DISCIPLINE

17 (Failure to Enter Into Written Contract)

18 15. Respondent is subject to disciplinary action under section 8780, subd. (d) of the
19 Code in conjunction with section 8759 in that he entered into a verbal agreement to provide land
20 surveying services but failed to enter into a written contract. The circumstances are as follows:

21 16. In or about 2003, Respondent and Terrence Howard, the property owner of 3000
22 Victoria Ave. (“Howard”) entered into a verbal contract for Respondent to provide the property
23 owner with a property survey. The property owner of the adjacent property located at 3006
24 Victoria Ave. was Roquel Smith (“Smith”). The survey was to be performed because of a
25 dispute between the two property owners.

26 17. In or about 2003, Respondent performed the survey and set monuments for the
27 property boundaries. Respondent did not file a record of survey within 90 days as required by
28 section 8762.

18. Respondent failed to file the "first check" of the record of survey with the L.A. County Surveyor until 25 March 2004. Sometime thereafter, the record of survey was returned by the L.A. County Surveyor with corrections.

19. In or about April, 2004, Respondent resubmitted the record of survey to the L.A. County Surveyor. As of June 20, 2005, Respondent had failed to obtain recordation of the record of survey.

20. On or about May 22, 2008, the L.A. County Surveyor returned the record of survey to Respondent for corrections. As of June 2, 2009, Respondent had failed to resubmit the record of survey to the L.A. County Surveyor.

SECOND CAUSE FOR DISCIPLINE

(Failure to File A Record of Survey Within 90 Days)

21. Respondent is subject to disciplinary action under section 8780, subd. (d) of the Code in conjunction with section 8762, subdivision (c), in that he failed to record a record of survey within ninety (90) days. The circumstances are as set forth in the preceding paragraphs 15 through 20 that Complainant hereby incorporates by reference.

THIRD CAUSE FOR DISCIPLINE

(Failure to Resubmit a Record of Survey Within 60 Days)

22. Respondent is subject to disciplinary action under section 8780, subd. (d) of the Code in conjunction with section 8767, in that he failed to resubmit a record a record of survey within sixty (60) days. The circumstances are as set forth in the preceding paragraphs 15 through 20 that Complainant hereby incorporates by reference.

DISCIPLINE CONSIDERATIONS

23. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about March 7, 1994, in a prior disciplinary action entitled In the Matter of the Accusation Against Conway Cecil Cooke, before the Board for Professional Engineers and Land Surveyors, in Case Number Accusation No. 552-A, Respondent's licenses were revoked, with revocation stayed, and Respondent was placed on probation for a period of three years on certain terms and conditions.

24. On or about January 5, 1998, pursuant to the final decision of the Board in the Matter of the Petition to Revoke Probation in Case Number 552-A, the period of probation was extended for one year to January 5, 1999 with certain terms and conditions. Upon successful completion of Respondent's probation, the licenses were fully restored. That decision is now final and is attached hereto as Exhibit "A".

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a decision:

1. Revoking or suspending Civil Engineer License Number C13860 and Structural Engineer License Number S1597 issued to Conway Cecil Cooke;

2. Ordering Conway Cecil Cooke to pay the Board for Professional Engineers and Land Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 11/25/09

Original Signed

DAVID BROWN
Executive Officer
Board for Professional Engineers and Land Surveyors
Department of Consumer Affairs
State of California
Complainant

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